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5 *Attorney for Plaintiff Manuel Magana,*  
6 *on behalf of himself and all others similarly situated*

7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11  
12 MANUEL MAGANA, on behalf of himself and  
13 all others similarly situated,

14 Plaintiff,

15 v.

16 DOORDASH INC.,

17 Defendant.

Case No. 4:18-cv-03395-PJH

**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S STATEMENT OF  
RECENT DECISION**

Hearing Date: September 26, 2018

Hearing Time: 9:00 a.m.

Hearing Place: Courtroom 3

JUDGE: HON. PHYLLIS HAMILTON

1 Plaintiff Manuel Magana, on behalf of himself and all others similarly situated, submits the  
2 following brief response to the Statement of Recent Decision filed by Defendant DoorDash Inc.  
3 today (Dkt. 46). DoorDash notes that today a panel of the Ninth Circuit ruled on one of the  
4 theories advanced in Plaintiffs' Opposition to Defendant's Motion to compel arbitration  
5 regarding a lead plaintiff's ability to reject arbitration on behalf of a class. See Dkt. 32 at pp. 5-8  
6 (discussing Bickerstaff v. Suntrust Bank, 299 Ga. 459, 468-69 (2016), cert. denied, 137 S. Ct.  
7 571 (2016)). However, Plaintiffs intend to pursue *en banc* review of today's decision, either in  
8 O'Connor, or, if necessary, in this case, particularly in light of the cursory analysis of this  
9 particular argument by the Ninth Circuit Court of Appeals.

10 Furthermore, the Ninth Circuit panel in O'Connor did not rule directly on the propriety of  
11 the district court's Rule 23(d) orders in that case; instead, it found that "[t]he Rule 23(d) orders  
12 were based on the district court's denial of the motions to compel arbitration and its granting of  
13 class certification" and were therefore "moot" after the reversal of the orders denying arbitration  
14 and granting class certification. See Ex. A at 9-10, 19. Here, the Rule 23(d) Order that Plaintiffs  
15 seek speaks to other conduct by DoorDash besides disseminating arbitration agreements to  
16 putative class members (as was the case in O'Connor), and the same mootness issue clearly does  
17 not apply. For all the reasons discussed in Plaintiff's prior briefing, a protective order remains  
18 necessary to protect the putative class in this case from unwittingly undermining their rights,  
19 while these issues continue to be addressed in this Court or on appeal.

20 If, however, the Court disagrees with all of Plaintiffs' arguments in his Opposition (Dkt.  
21 32), then Plaintiffs request that the Court dismiss the case rather than stay it so that Plaintiffs can  
22 take up these issues on appeal. See Gonzalez v. Coverall N. Am., Inc., No. 1602287-JGB, Dkt.  
23 29 (C.D. Cal. April 28, 2017) (granting Plaintiff's request to dismiss rather than stay case after  
24 granting motion to compel arbitration); see also Dist. Council 16 Int'l Union of Painters & Allied  
25 Trades v. LML Enterprises, Inc., 2013 WL 3802903, at \*1 (N.D. Cal. July 18, 2013) (citing  
26 Sparling v. Hoffman Constr. Co., 864 F.2d 635, 638 (9th Cir. 1988)) ("courts have discretion  
27  
28

1 under 9 U.S.C. § 3 to dismiss or stay claims that are subject to an arbitration agreement.”).

2  
3 Date: September 25, 2018

4 Respectfully submitted,

5  
6 MANUEL MAGANA, individually and on behalf  
of all others similarly situated,

7 By his attorneys,

8  
9 /s/ Shannon Liss-Riordan

10 Shannon Liss-Riordan, SBN 310719

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16 **CERTIFICATE OF SERVICE**

17 I hereby certify that a copy of the foregoing document was served by electronic filing on  
18 September 25, 2018, on all counsel of record.

19 /s/ Shannon Liss-Riordan

20 Shannon Liss-Riordan, Esq.